



Reference: *Commissioner of Competition v. Lafarge S.A.*, 2001 Comp. Trib. 33

File no.: CT2001004

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PUBLIC VERSION

IN THE MATTER of an application by the Commissioner of Competition for an order pursuant to sections 92 and 105 of the *Competition Act*, R.S.C. 1985, c. C-34; as amended

AND IN THE MATTER of the proposed acquisition by Lafarge S.A. of Blue Circle Industries plc, a company engaged in the construction materials business.

B E T W E E N:

The Commissioner of Competition
(applicant)

and

Lafarge S.A.
(respondent)

Date of hearing: 20010801

Member: McKeown, J. (Chairman),

C. Lloyd, L. Schwartz

Date of reasons: 20010801

Reasons signed by: McKeown, J.



CONSENT ORDER

[1] UPON THE application of the Commissioner of Competition (the “Commissioner”), pursuant to sections 92 and 105 of the *Competition Act*, R.S.C. 1985, c. C-34 as amended (the “Act”), and pursuant to a notice of application dated June 15, 2001, for a consent order directing the Divestiture of certain Assets and other remedies as specified in the draft consent order;

[2] AND UPON READING the notice of application, the statement of grounds and material facts, the consent order impact statement and the consent of the parties filed;

[3] AND ON CONSIDERING THAT the Commissioner and Lafarge S.A. (“Lafarge”) have reached an agreement which is reflected in this order;

[4] AND ON CONSIDERING THAT by the Interim Consent Order dated June 19, 2001, Lafarge is required, pending the final Divestiture of the Affected Businesses or further order of the Competition Tribunal, *inter alia*, to conduct itself pursuant to the Interim Consent Order, and, in particular, to hold separate and not knowingly to take any action to adversely affect the competitiveness, assets, operations or financial position of the Affected Businesses;

[5] AND ON CONSIDERING THAT the Commissioner declares himself satisfied that, on the basis of the considerations outlined in the consent order impact statement, the remedies provided herein, if ordered, will be sufficient to avoid any substantial lessening or prevention of competition in the markets described in the statement of grounds and material facts filed with the notice of application;

[6] AND IT BEING UNDERSTOOD by the parties that the Commissioner has alleged certain material facts, and Lafarge does not necessarily agree with all of the facts alleged but does not contest the statement of grounds and material facts or the consent impact statement for the purposes of this application and any proceeding initiated by the Commissioner relating to this consent order, including an application to vary or rescind;

[7] AND UPON BEING ADVISED that Lafarge consensually attorns to the jurisdiction of the Competition Tribunal for the purposes of these applications and any proceeding initiated by the Commissioner relating to this consent order, including an application to vary or rescind;

[8] AND UPON HEARING counsel for the parties in respect of this application;

THE TRIBUNAL ORDERS THAT:

Definitions

[9] For the purposes of this order, the following definitions shall apply:

(a) “Acquisition” means the proposed acquisition by Lafarge of Blue Circle as described in a Merger Agreement dated January 8, 2001, between Lafarge and Blue Circle;

(b) “Affected Businesses” means the Great Lakes Package, Great Lakes Aggregates Package, Other Aggregates Package and the Asphalt and Paving Package, save the assets identified in

Schedule “B” (“Excluded Assets”) hereto, including all rights, titles and interests in and to all assets, properties, business and goodwill, tangible or intangible, used to operate the said businesses in the ordinary course and in accordance with past practice, including but not limited to (i) all real property (together with appurtenances, licenses and permits) owned, leased or otherwise held by Blue Circle and used to operate the said businesses; (ii) all personal property owned, leased or otherwise held by Blue Circle and used to operate the said businesses; (iii) all intellectual property owned by or licensed to Blue Circle and used in respect of the operation of the said businesses, including but not limited to, trademarks, patents, mask works, copyrights, trade secrets, research materials, technical information, management information systems, software, inventions, test data, technological know-how, licenses, registrations, submissions, approvals, technology, specifications, designs, drawings, processes, recipes, protocols, and formulas, (iv) all rights of Blue Circle relating to the said businesses under any contract entered into with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees, and joint venture partners; (v) all governmental approvals, consents, licenses, permits, waivers, or other authorizations held by Blue Circle and used to operate the said businesses; (vi) all rights of Blue Circle relating to the said businesses under any warranty and guarantee, express or implied; (vii) all books, records, and files held by Blue Circle relating to the said businesses; (viii) all plant facilities, machinery, equipment, furniture, fixtures, tools, vehicles, transportation and storage facilities, and supplies held by Blue Circle and used to operate the said businesses; (ix) all rights in and to inventories of products, raw materials, supplies and parts, including work-in-process and finished goods held by Blue Circle and used in respect of the operation of the said businesses; (x) all customer and vendor lists, catalogues, sales promotion literature, and advertising materials held by Blue Circle and used in the operation of the said businesses; (xi) all rights in and to quarries and pits (together with appurtenances, licenses and permits) owned, leased or otherwise held by Blue Circle and used to operate the said businesses; and, (xii) all items of prepaid expense held by Blue Circle and used in respect of the operation of the said businesses;

(c) “Affected Business(es) Employees” means employees of Blue Circle who worked at least one hundred (100) work days for the relevant Affected Business(es) during the twelve month period prior to the date of Divestiture of the Affected Business(es);

(d) “Affected Business(es) Key Employees” means any Affected Business(es) Employees identified as such between Lafarge and the Purchaser of the Affected Business(es);

(e) “Asphalt and Paving Package” means all of the business identified as such in Schedule “A” hereto;

(f) “Blue Circle” means Blue Circle Industries plc, a corporation existing under the laws of England and Wales, and affiliates thereof;

(g) “Blue Circle Fonthill Aggregate Operation” means Blue Circle’s aggregates production facilities located at Fonthill, in the Town of Pelham, Region of Niagara, including the lands known as the “Haist Land”, “Haist Parcel A”, “Haist Parcel B”, “Washutta Lands”, “Park Street”, “Collins Land”, “Woodgate Land”, and “Haun Land”;

- (h) “Commissioner” means the Commissioner of Competition appointed pursuant to section 7 of the *Competition Act*;
- (i) “Confidential Information” means competitively sensitive or proprietary information relating to the Affected Businesses not independently known to Lafarge or its affiliates, including, without limiting the generality of the foregoing, any such customer lists, price lists, marketing methods or other trade secrets that relate to the said businesses;
- (j) “Consent Proceeding” means the application of the Commissioner pursuant to sections 92 and 105 of the Act for this order directing the divestiture of certain assets owned by affiliates of Blue Circle in Canada and certain other remedies in respect of this matter;
- (k) “Divest” means to implement a Divestiture(s);
- (l) “Divestiture(s)” means the sale, transfer, assignment, redemption or other disposition necessary to ensure that, by completion of the Divestiture(s), Lafarge has, directly or indirectly, no remaining right, title or interest in the Affected Business(es) inconsistent with the terms of this order;
- (m) “Excluded Assets” means the assets identified in Schedule “B” hereto, which need not be included in the Divestiture of the Affected Businesses;
- (n) “Final Divestiture” means the Divestiture which results in the circumstances described in paragraph 12 of this order;
- (o) “Great Lakes Aggregates Package” means all of the businesses identified as such in Schedule “A” hereto;
- (p) “Great Lakes Package” means all of the businesses identified as such in Schedule “A” hereto, including, for greater certainty, all of Blue Circle’s rights, titles and interests in and to the Great Lakes Slag Joint Venture;
- (q) “Great Lakes Slag Joint Venture” means the joint venture between Blue Circle Canada Inc. and St. Lawrence Cement Inc. (“St. Lawrence”) as set forth in the Share Purchase and Shareholder Agreement by and among St. Lawrence, Blue Circle Canada Inc. and Great Lakes Slag Inc., dated March 27, 2000;
- (r) “Independent Manager(s)” means the Independent Manager(s) of the Affected Business(es) appointed pursuant to paragraphs 7 or 8 of the Interim Consent Order dated June 19, 2001, and any employees, agents or other persons acting for or on behalf of the Independent Manager(s) with respect to any matter referred to in the Interim Consent Order dated June 19, 2001;

- (s) “Lafarge” means Lafarge S.A., a corporation existing under the laws of France;
- (t) “Monitor” means any Monitor appointed pursuant to paragraphs 21–22 of the Interim Consent Order dated June 19, 2001, and any employees, agents or other persons acting for or on behalf of the Monitor with respect to any matter referred to in the Interim Consent Order dated June 19, 2001;
- (u) “Other Aggregates Package” means all of the businesses identified as such in Schedule “A” hereto;
- (v) “Person” means any natural person, corporation, association, firm, partnership or other business or legal entity;
- (w) “Purchaser(s)” means the person(s) or entity(ies) who will purchase any, or all, of the Affected Businesses in accordance with the procedure for Divestiture set out in this order;
- (x) “Respondent” means Lafarge;
- (y) “Trustee” means any trustee appointed pursuant to paragraph 27 or 30 of this order, and any employees, agents, or other Persons acting for or on behalf of the Trustee with respect to any matter referred to in this order.

Continuation of the Interim Consent Order

[10] Paragraphs 7 to 31 and 35 to 38 of the Interim Consent Order dated June 19, 2001, are attached hereto as Schedule “C” and are hereby incorporated into and made a part of this order and expressions not defined therein shall have the meanings set out in paragraph 9 of this order. Reference to “this order” in such incorporated paragraphs of the Interim Consent Order shall be read as references to the present order, except in relation to paragraph references, which references shall be to the numbers of the incorporated paragraphs. Except to the extent incorporated hereby, the Interim Consent Order is hereby rescinded as of the date of the making of this order.

Application

[11] The provisions of this order apply to:

- (a) the Respondent;
- (b) each division, subsidiary, or other Person controlled by the Respondent and each officer, director, employee, agent or other Person acting for or on behalf of the Respondent with respect to any of the matters referred to in this order save the Affected Businesses;
- (c) the successors and assigns of the Respondent, and all other Persons acting in concert or participating with any of them with respect to the matters referred to in this order, save the Affected Businesses, who shall have received actual notice of this order;

(d) the Independent Manager(s) of the Affected Businesses or any substitute Independent Manager(s) appointed pursuant to paragraphs 7 and 8 of the Interim Consent Order dated June 19, 2001, and each employee, agent or other Person acting for or on behalf of the Independent Manager with respect to any matter referred to in this order;

(e) Daniel E. Somes or any other individual appointed herein as Monitor pursuant to paragraph 21 of the Interim Consent Order dated June 19, 2001, or any substitute Monitor(s) appointed pursuant to paragraph 22 of the Interim Consent Order dated June 19, 2001, and each employee, agent or other Person acting for or on behalf of such Monitor with respect to any matter referred to in this order;

(f) the Trustee; and,

(g) the Purchaser(s) and the Purchaser's successors and assigns.

Divestiture of the Affected Businesses

[12] Lafarge shall use its best efforts to Divest the Affected Businesses as soon as possible, but in any event no later than one hundred and eighty (180) days from the date of closing of the Acquisition, in accordance with the procedure for Divestiture set out herein. To the extent that the Divestiture(s) of an Affected Business(es) required hereby was completed prior to the issuance of this order, to the satisfaction of the Commissioner, the Commissioner shall waive compliance with the obligations herein and the Divestiture will be deemed to have been implemented in accordance with this order. To the extent that the Divestiture(s) of an Affected Business(es) required hereby was commenced, but not completed, prior to the issuance of this order, to the satisfaction of the Commissioner, the Commissioner may waive compliance with the obligations in paragraphs 23, 24 and/or 26 herein and the Divestiture(s) procedures undertaken to that date will be deemed to have been undertaken in accordance with this order. If the Divestiture of any, or all, of the Affected Businesses is not completed by Lafarge within one hundred and eighty (180) days from the date of the closing of the Acquisition, the Divestiture(s) of such remaining Affected Business(es) shall be carried out by the Trustee in accordance with the procedure set out hereafter.

Divestiture Procedure

[13] Lafarge shall Divest the Great Lakes Package to a Purchaser approved by the Commissioner.

[14] Lafarge shall offer to Divest all of the Great Lakes Aggregates Package to the proposed Purchaser of the Great Lakes Package, as approved by the Commissioner per paragraph 13 above, and shall divest to such Purchaser any, or all, of the Great Lakes Aggregates Package which such Purchaser wishes to acquire.

[15] Lafarge shall offer to Divest all of the Great Lakes Aggregates Package, not divested pursuant to paragraph 14 above, and all of the Other Aggregates Package, to prospective Purchaser(s), including, but not limited to, the Purchaser referenced in paragraph 14 above, all of whom will be free to bid on any or all of the businesses within these Packages. Lafarge may Divest all, or any, of these businesses to a Purchaser(s) approved by the Commissioner. If the Purchaser of the Great Lakes Package, referenced in paragraph 14 above offers the most advantageous terms, including but not limited to price, for the Other Aggregates Package, or any part thereof, Lafarge shall divest the Other Aggregates Package, or such parts thereof, to such Purchaser.

[16] Lafarge shall offer to Divest the Asphalt and Paving Package to a prospective Purchaser(s). The said prospective Purchaser(s) will be free to bid on any or all of the Asphalt and Paving Package. Lafarge will Divest all, or any, of the Asphalt and Paving Package to a Purchaser(s) approved by the Commissioner.

[17] Lafarge shall not, without the consent of the Commissioner, provide financing for all or any part of any Divestiture under this order which would permit Lafarge to influence or control, directly or indirectly, the relevant businesses after the Divestiture.

[18] Lafarge need not divest any of the assets of the Affected Businesses, referenced in paragraphs 13-16 above, if the Purchaser(s) chooses not to acquire such businesses and the Commissioner approves the Divestiture without such businesses.

[19] The Divestiture(s) of the Affected Business(es) shall be completed on the following terms:

- (a) by way of disposition of the Affected Businesses for use as a going concern;
- (b) to an arm's length Purchaser(s) who will meet the following objective criteria:
 - (i) effect the purchase with the expressed intention of carrying on the relevant business(es);
 - ii) have the managerial, operational and financial capability to so carry on the relevant business(es);
- (c) by way of a commercially reasonable procedure; and
- (d) on usual commercial terms for transactions of the size and nature of that contemplated in this order and in the circumstances contemplated by this order.

[20] In connection with any Divestiture made pursuant to this order, Lafarge will not require or otherwise cause to be instituted, any restrictions, whether in the form of restrictive covenants, non-compete agreements or other terms or conditions, which in any way limit or impair the ability of any Person(s) acquiring any of the Affected Businesses to operate those businesses as a going concern.

[21] The Affected Businesses shall not be Divested on the condition that the Purchaser enter into any joint venture, marketing, co-packing, swap or other collaborative arrangement with Lafarge, but this provision shall not preclude Lafarge and the Purchaser from entering into mutually agreeable transitional arrangements necessary or desirable to facilitate the sale of the Affected Businesses, subject to the approval of the Commissioner.

[22] For a period of up to six (6) months from the date of Divestiture of the Affected Business(es):

- (a) at the request of the Purchaser of the Affected Business(es), Lafarge shall provide technical assistance and advice sufficient to enable the Purchaser of the Affected Business(es) to obtain government approvals necessary to operate the Affected Business(es);
- (b) at the request of the Purchaser of the Affected Business(es), Lafarge shall provide such technical assistance as is necessary to enable the Purchaser of the Affected Business(es) to conduct the Affected Business(es) in substantially the same manner as Blue Circle operated the Affected Business(es) at the time of the announcement of the Acquisition; and,
- (c) Lafarge shall receive no compensation for providing the assistance required that exceeds the out-of-pocket costs associated with providing such technical assistance and the direct cost of the material and labor to provide such assistance.

[23] Lafarge shall allow the Purchaser of the Affected Business(es) an opportunity to employ the Affected Business(es) Employees as follows:

- (a) not later than thirty (30) days before the date of Divestiture of the Great Lakes Package, and not later than seven (7) days before the date of Divestiture of the Great Lakes Aggregates Package, Other Aggregates Package and/or the Asphalt and Paving Package, Lafarge shall, to the extent permissible under applicable laws, (i) provide to the Purchaser of the Affected Business(es) a list of all the relevant Affected Business(es) Employees, (ii) allow the Purchaser of such Affected Business(es) an opportunity to interview such Affected Business(es) Employees, and (iii) allow the Purchaser of such Affected Business(es) to inspect the personnel files and other documentation relating to such Affected Business(es) Employees.
- (b) Lafarge shall, to the extent permissible under applicable laws, (i) not offer any incentive to any Affected Business(es) Employee to decline employment with the Purchaser of such Affected Business(es), (ii) remove any contractual impediments with Lafarge that may deter any Affected Business(es) Employee from accepting employment with the Purchaser of such Affected Business(es), including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts with Lafarge that would affect the ability of the Affected Business(es) Employee to be employed by the Purchaser of such Affected Business(es), (iii) not interfere with the employment by the Purchaser of the Affected Business(es) of any Affected Business(es) Employee, (iv) continue employee benefits offered by Lafarge until the divestiture has been completed, including regularly scheduled raises and bonuses, and regularly scheduled vesting of all pension benefits, and (v) pay a bonus to Affected Business(es) Key Employees who accept an offer of employment from the Purchaser of the Affected Business(es)

no later than thirty (30) days from the date Lafarge divests the Affected Business(es) pursuant to the terms set forth in Confidential Schedule “D” to this order.

(c) For a period of one year from the earlier of the date this order is issued or the Decision and Order of the Federal Trade Commission in respect of this matter becomes final, Lafarge shall not, directly or indirectly, solicit, hire or enter into any arrangement for the services of any Affected Business(es) Employee employed by the Purchaser of such Affected Business(es), unless the Affected Business(es) Employee’s employment has been terminated by the Purchaser of such Affected Business(es).

[24] Any Person making a *bona fide* inquiry of Lafarge or its agent regarding the possible purchase by that Person or its principal of an Affected Business(es) shall be notified that the Divestiture(s) is being made pursuant to this order and provided with a copy of the public version of this order. Any *bona fide* prospective Purchaser shall be furnished, subject to the execution by such Person of a customary confidentiality agreement, with all pertinent information regarding the relevant businesses, such information to be provided to the Commissioner on request. Any *bona fide* prospective Purchaser shall, subject to the execution by such Person of an appropriate confidentiality agreement, be permitted to make such inspection of the relevant assets and of all financial, operational or other documents and information as may be relevant to the Divestiture(s) of the relevant business(es) as are in the possession or control of Lafarge, except for all documents which have been or shall be made the subject of an order of confidentiality of the Competition Tribunal.

[25] Lafarge shall use its best efforts to accomplish the Divestiture(s) of the Affected Businesses within the time period specified in this order.

[26] Lafarge shall, at a minimum every thirty (30) days, report to the Commissioner, in writing, of the progress of its efforts to accomplish the Divestiture of the Affected Businesses, including a description of contacts or negotiations and the identity of all parties contacted and prospective Purchasers who have come forward, all with reasonable details. The Commissioner has the right to request additional information from Lafarge regarding the Divestiture efforts and Lafarge shall respond forthwith.

Trustee Sale

[27] If the Divestiture of the Affected Businesses is not completed by Lafarge within one hundred and eighty (180) days from the date of closing of the Acquisition, the Commissioner may appoint Daniel E. Somes as Trustee to effect the Divestiture (the “Trustee sale”) of one or more of the Affected Businesses. The Commissioner may select someone other than Daniel E. Somes to serve as the Trustee, subject to the consent of Lafarge, which consent shall not be unreasonably withheld. Lafarge shall be deemed to have consented to the appointment of such person as Trustee if Lafarge has not opposed the appointment, in writing, within ten (10) days of Lafarge’s receipt of written notice by the Commissioner of the identity of the proposed Trustee. The Trustee appointed pursuant to the above shall be appointed on the following terms:

- (a) the Great Lakes Package shall be sold by the Trustee within twelve (12) months of the Trustee's appointment by the Commissioner and the U.S. Federal Trade Commission, at a price and on terms and conditions most advantageous to Lafarge then reasonably available, in the opinion of the Trustee, but with no minimum price;
- (b) the Great Lakes Aggregates Package, the Other Aggregates Package, and the Asphalt and Paving Package shall be sold by the Trustee [] of the Trustee's appointment by the Commissioner and the U.S. Federal Trade Commission, at a price and on terms and conditions most advantageous to Lafarge then reasonably available, in the opinion of the Trustee, but with no minimum price;
- (c) the Trustee sale shall be considered to have been completed when the proposed Purchaser(s) has signed a binding agreement that has not been the subject of objection by the Commissioner pursuant to paragraph 36, by Lafarge pursuant to paragraph 38, or has been approved by the Competition Tribunal pursuant to paragraph 38 hereinafter;
- (d) after the appointment of the Trustee becomes effective, only the Trustee shall have the sole right to effect the Divestiture of the Affected Businesses;
- (e) the Trustee shall have full power and authority to effect the Trustee sale and shall use best efforts to accomplish it;
- (f) Lafarge shall use its reasonable best efforts to assist the Trustee in accomplishing the Trustee sale. In connection therewith, the Trustee shall have full and complete access, as is reasonable in the circumstances, subject to any legally recognized privilege and an appropriate confidentiality agreement, to the personnel, books, records and facilities of Lafarge relating to the Affected Businesses, who shall take no action to interfere with or impede the Trustee's accomplishment of the Trustee sale;
- (g) after his appointment, the Trustee shall, at a minimum, every sixty (60) days, file reports with the Commissioner and Lafarge, setting forth the Trustee's efforts to accomplish the Trustee sale;
- (h) the Trustee shall promptly notify Lafarge and the Commissioner of any negotiations with a prospective Purchaser that, in the opinion of the Trustee, may lead to a Trustee sale;
- (i) all expenses reasonably and properly incurred by the Trustee in the course of the Trustee sale shall be paid by Lafarge and the proceeds of the Trustee sale shall be paid to Lafarge or as Lafarge may direct; and
- (j) the Trustee shall have such other powers as the Competition Tribunal may grant to the Trustee upon the request of the Commissioner or Lafarge.

[28] Lafarge shall not object to the Trustee sale on any grounds other than the Trustee's malfeasance, gross negligence, bad faith or breach of this order and any such objection shall be made in accordance with provisions of paragraph 38 hereinafter. Lafarge shall hold the Trustee harmless against any losses, claims damages, liabilities or expenses arising out of, or in connection with, the performance of Trustee's duties under this order except to the extent that such liabilities, losses, damages, claims or expenses result from malfeasance, gross negligence, bad faith or breach of this order.

[29] If the Trustee has not accomplished the Trustee sale within the time period specified in paragraph 27 above, the Trustee shall thereupon promptly file with the Competition Tribunal, on a confidential basis, a report setting forth: (1) the Trustee's efforts to accomplish the required sale; (2) the reasons, in the Trustee's judgment, why the required sale has not been accomplished, and (3) the Trustee's recommendations. The Trustee shall, at the same time, furnish such report to the Commissioner and Lafarge, who shall have the right to be heard by, and to make additional recommendations to, the Competition Tribunal consistent with the purpose of the Trustee sale(s). The Competition Tribunal may thereafter make such orders as it deems appropriate in order to effect the Trustee sale.

[30] If the Trustee appointed pursuant to paragraph 27 above has ceased to act or failed to act diligently or otherwise in accordance with this order, the Commissioner may appoint a substitute Trustee to carry out the functions of the Trustee in accordance with this order. This order shall apply to any substitute Trustee appointed pursuant to this paragraph.

Extension of Time

[31] Notwithstanding anything to the contrary herein, if, prior to the expiry of a time period for a Divestiture(s) herein, Lafarge or the Trustee, as the case may be, and a prospective Purchaser(s) of some or all of the Affected Businesses enter into a letter of intent, or Lafarge or the Trustee, as the case may be, receive an offer or similar written communication of intention to purchase such Affected Business(es), Lafarge or the Trustee, as the case may be, shall, advise the Commissioner and shall have an additional thirty (30) days within which to complete such Divestiture.

[32] The Commissioner and Lafarge may agree to extend any of the time periods applicable herein.

Commissioner's Approval

[33] The Divestiture(s) of the Affected Businesses by Lafarge or the Trustee, pursuant to the order, is subject to the approval of the Commissioner, which shall be based on criteria outlined in paragraph 19 herein above and shall be obtained in accordance with the notification procedure set out in paragraphs 34 to 39 hereinafter. If the proposed Purchaser(s) is an existing or planned participant in the relevant market identified in the statement of grounds and material facts, the Commissioner may also take into account the likely impact of the Divestiture on competition in that market as a consideration in approving the Divestiture.

Notification

[34] Lafarge or the Trustee, whichever is then responsible for effecting the Divestiture of all or part of the Affected Businesses, shall notify the Commissioner of any proposed Divestiture. If the Trustee is responsible, it shall similarly notify Lafarge. The notice shall include:

- (a) the identity of the proposed Purchaser(s);
- (b) the details of the proposed transaction;
- (c) information concerning whether the proposed Purchaser(s) would satisfy the terms of paragraph 19 herein above;
- (d) an update to the last report provided pursuant to paragraphs 26 or 27(g) herein above; and
- (e) the agreement of the proposed Purchaser that it will respond within ten (10) days to a request by the Commissioner for additional information regarding the proposed Divestiture.

[35] Within ten (10) days after receipt of the notice referred to in paragraph 34 herein above, the Commissioner and, in the case of a Trustee sale, Lafarge may request additional information concerning the proposed Divestiture(s), the proposed Purchaser(s) and any other potential Purchaser(s). Lafarge, the Trustee, or the proposed Purchaser(s), as the case may be, shall provide the additional information within ten (10) days of the receipt of the request, unless the Commissioner agrees in writing to extend the time.

[36] Within fifteen (15) days after receipt of the notice pursuant to paragraph 34 herein above or, if the Commissioner has requested additional information pursuant to paragraph 35, within fifteen (15) days after receipt of the said information, the Commissioner shall notify, in writing, Lafarge and the Trustee, if there is one, if the Commissioner objects to the proposed Divestiture(s) on the ground that it does not conform to the terms of this order, and shall give detailed reasons therefore. If the Commissioner objects, Lafarge may apply to the Competition Tribunal for an order approving the proposed Divestiture(s).

[37] If the Commissioner fails to object within the period set out in paragraph 36 herein above and on the grounds set out in paragraph 36, or if the Commissioner notifies, in writing, Lafarge and the Trustee, if there is one, that he does not object, then the Divestiture(s) of the Affected Businesses may be completed, subject to paragraph 38 and 39 hereinafter.

[38] Within ten (10) days after receipt of the notice pursuant to paragraph 34 herein above or if Lafarge has requested additional information pursuant to paragraph 35, within ten (10) days after receipt of said information, Lafarge shall notify the Commissioner and the Trustee in writing if it objects to the proposed Trustee sale pursuant to paragraph 28 herein above, and the grounds for its objection. Upon objection by Lafarge pursuant to paragraph 28, the proposed Trustee sale shall not be completed unless approved by the Competition Tribunal.

[39] Lafarge or the Trustee, as the case may be, shall notify the Commissioner forthwith after the Divestiture of the Affected Businesses required by this order has been completed.

Compliance Inspection

[40] For the purpose of determining or securing compliance with this order, subject to any valid claim to a legally recognized privilege, and upon written request, the Respondent shall permit any duly authorized representative of the Commissioner:

- (a) upon a minimum of three (3) days notice to the Respondent, access during office hours of the Respondent to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under control of the Respondent relating to compliance with this order; and
- (b) upon a minimum of eight (8) days notice to the Respondent, and without restraint or interference from the Respondent, to interview directors, officers or employees of the Respondent on matters in the possession or under control of the Respondent relating to compliance with this order.

Notice

[41] Notices and reports required to be given pursuant to any of the terms of this order, shall be considered given if dispatched by personal delivery, registered mail or facsimile to the address or facsimile number below:

- (a) If to the Commissioner:

The Commissioner of Competition
Competition Bureau
Industry Canada
Place du Portage
Phase I, 50 Victoria Street,
Hull, Quebec K1A 0C9

Attention: André Brantz
John Symes

Fax: (819) 953-9267

(b) If to Lafarge

Lafarge S.A.
61, rue des Belles Feuilles
B.P. 4075782
Paris, Cedex 16 France

Attention: Dominique Hooreman

Fax: (011) 331 44 34 1148

With a copy to:

Stikeman Elliott
Barristers & Solicitors
1600-50 O'Connor Street
Ottawa, Ontario K1P 6L2

Attention: Lawson A.W. Hunter, Q.C.
Susan Hutton
Randall J. Hofley

Fax: (613) 230-8877

Further Provision

[42] Lafarge shall require, as a condition of sale of the Blue Circle Fonthill Aggregate Operation to Lafarge Corp. or an affiliate thereof, that Lafarge Corp. or an affiliate thereof offer to supply aggregate products produced at the Blue Circle Fonthill Aggregate Operation to all purchasers at commercially reasonable and non-discriminatory prices and terms, provided that Lafarge Corp. or an affiliate thereof, as the case may be, shall not be required to offer to supply any purchaser which is in default of payment under any supply arrangement with Lafarge Corp. or an affiliate thereof. Lafarge, should it maintain the Blue Circle Fonthill Aggregate Operation, shall offer to supply aggregate products produced at the Blue Circle Fonthill Aggregate Operation to all purchasers at commercially reasonable and non-discriminatory prices and terms, provided that Lafarge shall not be required to offer to supply any purchaser which is in default of payment under any supply arrangement with Lafarge or an affiliate thereof.

General

[43] Jurisdiction shall be retained by the Competition Tribunal for the purpose of any application by the Commissioner or Lafarge to rescind or vary any of the provisions of this order in the event of a change of circumstances or otherwise.

[44] In the event of a dispute as to the interpretation of this order, the Commissioner, the Trustee or Lafarge shall be at liberty to apply to the Competition Tribunal for a further order interpreting any of the provisions of this order.

DATED at Ottawa, this 1st day of August, 2001.

SIGNED on behalf of the Competition Tribunal by the presiding judicial member.

(S) W.P. McKeown

[45] SCHEDULE "A"

AFFECTED BUSINESSES

A. GREAT LAKES PACKAGE

Cement Assets

1. The cement plant located at Bowmanville, Ontario, including any pits, quarries and lands located at Bowmanville, Ontario
2. The cement plant located at St. Marys, Ontario including any pits, quarries and lands located at St. Marys, Ontario
3. The grinding facilities and terminal located at Detroit, Michigan;
4. The following

Terminals:

Buffalo, New York
Cleveland, Ohio
Grand Rapids, Michigan
Green Bay, Wisconsin
Milwaukee, Wisconsin
Schoolcraft, Michigan
Waukegan, Illinois;

Barges:

Lewis G. Harriman (U.S. Flag)
St. Marys Barge #1 (Canadian Flag)
St. Marys Barge #2 (Canadian Flag)
St. Marys Barge #3 (Barbados Flag)

Tugs:

"Sea Eagle II" Tug for St. Marys Barge #2; and

5. Hutton Transport Limited

Ready Mix Assets

1. Barrie, Ontario
2. Belleville, Ontario
3. Blenheim, Ontario
4. Bowmanville, Ontario
5. Brampton, Ontario
6. Brantford, Ontario
7. Burlington, Ontario
8. Caledon, Ontario
9. Cambridge, Ontario
10. Cobourg, Ontario
11. Elora, Ontario
12. Guelph, Ontario
13. Hamilton, Ontario
14. Hanover, Ontario
15. Hull, Quebec
16. Ingersoll, Ontario
17. Kingston, Ontario
18. London, Ontario
19. Maple, Ontario
20. Milton, Ontario

21. Mount Forest, Ontario
22. New Hamburg, Ontario
23. Newmarket, Ontario
24. Niagara (Thorold), Ontario
25. Ottawa (Gloucester), Ontario
26. Ottawa (Kanata), Ontario
27. Perth, Ontario
28. Peterborough, Ontario
29. Sarnia, Ontario
30. Scarborough, Ontario
31. St. Thomas, Ontario
32. Sutton, Ontario
33. Toronto (Bathurst and Etobicoke), Ontario
34. Toronto (Leaside), Ontario
35. Wallaceburg, Ontario
36. West Lorne, Ontario
37. Whitby, Ontario
38. Windsor, Ontario
39. Woodstock, Ontario

B. GREAT LAKES AGGREGATES PACKAGE

1. Mississauga, Ontario, being the leased Blue Circle Aggregates Canada head office located at 7145 West Credit Avenue, Building 1, Suite 200; and

The aggregates operations and/or lands located at:

2. Cambridge, Ontario, being the owned or leased lands known as “KW Blair”, “Ayr”, “Brown”, “Dance”, “Dabrowski” and “David”, all located in the Township of North Dumfries, Regional Municipality of Waterloo;
3. Sunderland, Ontario, being the “Sunderland Plant” and the “Cannington Pit” located in Brock Township, Municipality of Durham and the owned land known as “Woodville” located in the City of Kawartha Lake, Township of Mariposa, County of Victoria;
4. Aberfoyle, Ontario, being the “South Pit”, “Silt Pond”, “Main Pit” and the owned or leased lands known as “Mason”, “Guthrie”, “Coburn”, “Edginton”, “Mast”, “Duscharme”, “McMillan”, “McNally”, “Martinello” and “Tikal” all located in the Township of Puslinch, County of Wellington;
5. Brighton, Ontario, being the “Main Plant”, “South Plant” and the lands known as “McDonnell”, “Whitehouse” and “Widdicks” all located in the Township of Brighton, County of Northumberland; and
6. North London, Ontario, being the owned or leased lands known as “Crich”, “Fanshawe”, “Takla/Cooper”, and “Fanshawe Heights”, all located in the City of London, County of Middlesex, and “Dehaan (Purple Hill Pit)”, “McLaughlin”, “Mills”, “McKay”, “UTRCA (Archery)”, “UTRCA (Fanshawe Heights)”, “McGuffin”, “Stone”, “Thamesford” and “Dorchester” all located in the Municipality of Thames Centre, County of Middlesex, and the licensed lands known as “D. Kittmer-Harrington 1”, and “F. Kittmer-Harrington 2” both located in the Township of Zorra, County of Oxford, and as “Diocese”, “UTCRA-Sugarbush” and “Sims” located in the Municipality of Thames Centre, County of Middlesex.

C. OTHER AGGREGATES PACKAGE

The aggregates operations and/or lands located at:

1. Acton, Ontario, being the “Acton Quarry” and the owned lands known as “Taro” both located in the Town of Halton Hills, Regional Municipality of Halton;
2. Putnam, Ontario, being the owned lands known as “Wallis” and the licensed land known as “Szorenyi” both located in the Township of North Dorchester, County of Middlesex, and the leased “Woodstock Pit” and the owned lands known as “Ross”, “Langford” and “Willford” all located in the Township of Southwest Oxford, County of Oxford;
3. Brantford, Ontario, being the owned or leased lands known as “Brittain”, “Johnson”, “Reid”, “Cornell”, “Henniger”, “Greenwood”, “Scoffield”, the “Western Region Office”, “Nemeth”, “Galt Malleable”, “Moon”, “Johnson Nemeth”, “Wilde”, “Chowhan”, “Bluebird”, “Grisenthwaite”, “Leach”, “Pottruff”, “Ruttan” and “Potruff (Garth)” all located in the City of Brantford, County of Brant;
4. Mosport, Ontario, being the owned land located in the Municipality of Clarington (formerly Township of Clarke), Regional Municipality of Durham; and
5. Wakefield, Quebec, being the owned “Wakefield Pit” located in the Township of Wakefield, Registration Division of Gatineau.

D. ASPHALT AND PAVING (ROAD CONSTRUCTION) PACKAGE

1. TCG Asphalt & Construction Inc., including leased lands known as “Brittain” in the City of Brantford, County of Brant, leased lands on Jetstream Road and on Clarke Road both in the City of London, County of Middlesex, and leased lands known as “Takla/Cooper” in the City of London, County of Middlesex.

[46] **SCHEDULE "B"**

EXCLUDED ASSETS

1. cash and cash equivalents;
2. any U.S. insurance policies that do not apply exclusively to the Affected Business(es) and prepaid expenses for any such U.S. insurance policies;
3. sporting tickets (to the Toronto Blue Jays, Toronto Raptors, Toronto Maple Leafs, Ottawa Senators) and any interest in the Ottawa Senators hockey club;
4. the following pension plans: (i) Blue Circle Inc. Savings Plan for Salaried Employees; (ii) Blue Circle Inc. Savings Plan for Blue Circle Cement Hourly Employees; and (iii) Blue Circle Inc. Pension Plan;
5. subject to item 6 below, intellectual property that is not used exclusively in the Affected Business(es), provided, however, that, to the extent such intellectual property is used in the Great Lakes Package, Lafarge shall grant the Purchaser of the Great Lakes Package a perpetual nonexclusive, paid-up (royalty-free) license to use such intellectual property in the operation of the businesses in the Great Lakes Package;
6. all rights, including the right to use, in or to any trade name and trademark whether or not registered in any country in the world which includes the term "BLUE CIRCLE" or the "BLUE CIRCLE" design or the term "NEWCEM" or the "NEWCEM" design; provided, however, that the Purchaser of the Great Lakes Package shall have rights to use the "BLUE CIRCLE" trade name and trademark and the "NEWCEM" trade name and trademark for a transition period of three months following the Divestiture of the Great Lakes Package;
7. any titles, leases, licenses or other rights to or in real property other than the real property comprising the assets identified as the Affected Business(es) at Schedule "A" hereto;
8. any books and records related to assets not being divested to the Purchaser of the Affected Business(es);

9. any books and records that Lafarge is required by law to retain, so long as Blue Circle delivers at least one copy thereof to the Purchaser of the Affected Business(es);
10. all refunds, rebates or similar payments of taxes to the extent such taxes were paid by or on behalf of Blue Circle prior to the date of Divestiture of the Affected Business(es); and,
11. QPR Corp., including the leased lands known as “Brittain” and “Western Region Office” in the City of Brantford, County of Brant.

[47] **SCHEDULE “C”**

PARAGRAPHS 7 to 31 and 35 to 38 OF INTERIM CONSENT ORDER DATED JUNE 19, 2001

Independent Manager(s)

[48] Effective immediately upon the date that the Acquisition is closed, the Commissioner shall appoint an independent manager(s) (the “Independent Manager(s)”) of the Affected Businesses to manage and operate the said businesses independently of the Respondent, as specified herein, pending the Divestiture of the said businesses and/or a final determination of the Consent Proceeding. Lafarge shall be responsible for all fees and expenses properly charged or incurred by the Independent Manager(s), which may include economic incentives dependent on the financial performance of the Affected Businesses if there are also sufficient incentives for the Independent Manager to operate the Affected Businesses pursuant to the terms set out in paragraph 9 below.

[49] In the event an Independent Manager ceases to act in his or her capacity as such then the Respondent shall select a substitute(s) Independent Manager, subject to the approval of the Monitor. This order shall apply to any substitute Independent Manager appointed pursuant to this paragraph.

Independent Management of the Affected Businesses

[50] Pending final determination of the Consent Proceeding, or until further order of the Competition Tribunal, the Independent Manager(s) shall take all necessary steps and give all necessary instructions to cause the Affected Businesses under his or her management, and any servants or agents of such Affected Businesses or the Independent Manager(s), to:

- (a) operate such Affected Businesses independently of the Respondent;
- (b) operate such Affected Businesses in compliance with all applicable laws;
- (c) maintain all material permits and approvals necessary for the operation of such Affected Businesses;
- (d) use commercially reasonable efforts to maintain and enhance the competitiveness and the customer base of such Affected Businesses and in particular, continue to solicit business and to submit bids in response to tenders as they arise;
- (e) maintain and hold such Affected Businesses in good condition and repair, normal wear and tear excepted, and to standards at least equal to those maintained by Blue Circle prior to the date of this order;

- (f) establish all fees, deductions, discounts, credits or allowances with respect to the goods and services provided by such Affected Businesses;
- (g) take all commercially reasonable steps to honour all customer contracts and to maintain quality and service standards for customers of such Affected Businesses at the level that existed prior to the date of this order, save as required by prudent management of such Affected Businesses;
- (h) ensure that such Affected Businesses do not engage in any type of business other than the type of business conducted by those businesses as of the date of this order;
- (i) not communicate any Confidential Information related to such Affected Businesses to the Respondent, including each division, subsidiary or other Person controlled by the Respondent, or any other Person, save the Commissioner, except as permitted herein;
- (j) not knowingly take or allow to be taken any action that materially and adversely affects the competitiveness, assets, operations or financial status of such Affected Businesses;
- (k) not materially curtail marketing, sales, promotional or other activities of such Affected Businesses in connection with the solicitation of existing or prospective customers save as required by prudent management of such Affected Businesses;
- (l) not, to any material extent, relocate, destroy or dismantle any fixed assets of such Affected Businesses;
- (m) not, to any material extent, enter into any agreement to lease or otherwise encumber any assets of such Affected Businesses, or real property occupied by such Affected Businesses to or in favour of any other Person save as required by prudent management of such Affected Businesses;
- (n) not, to any material extent, alter, or cause to be altered, the management of such Affected Businesses as it existed prior to the date of this order, except as may be necessary to comply with the terms of this order or to replace employees that may resign, and save as required by prudent management of such Affected Businesses; or
- (o) not terminate or alter any current employment, salary or benefit agreements for any employees working in such Affected Businesses, to any material extent, save as required by prudent management of such Affected Businesses.

[51] Subject to the approval of the Monitor, the Independent Manager shall have authority to enter into or renew customer contracts in relation to the Affected Businesses under his or her management, in the name of the business(es).

[52] The Respondent shall, if necessary, contribute working capital with respect to the Affected Businesses to permit the applicable Affected Business(es) to continue to operate at standards at least equal to those existing at the date of the Acquisition and may contribute funds

for significant capital expenditures in consultation with the Independent Manager of the applicable Affected Business(es) and any Monitor thereof.

[53] Notwithstanding any other provision of this order, the Independent Manager is permitted, with the approval of the Monitor, to use the managerial, administrative and operational (including maintenance) resources of the Respondent for the following services:

- (a) public affairs/media relations services;
- (b) legal services;
- (c) information systems services, including construction, maintenance and support of all SAP and other computer systems;
- (d) to maintain, in accordance with Canadian and U.S. generally accepted accounting principles (as applicable), separate and adequate financial ledger books and records of material financial information with respect to the Affected Businesses;
- (e) preparation of tax returns and other audit services;
- (f) human resources and payroll services;
- (g) processing of accounts payable;
- (h) security services;
- (i) technical support;
- (j) occupational health and safety, including medical services such as drug testing;
- (k) environmental permitting and liability, and any other regulatory compliance services;
- (l) insurance, including notification of claims for which coverage is sought;
- (m) financial accounting services, including banking;
- (n) engineering services, including engineering, design and maintenance of plants and terminals;
- (o) real estate services, including the identification and development of new sites;
- (p) procurement of goods and services utilized in the ordinary course of business by the Affected Business(es); and
- (q) transportation and other logistics services.

The Respondent shall ensure that all personnel providing such services retain and maintain all Confidential Information received for purposes of providing the above services on a confidential basis, and, except as is permitted by this order, such Persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any Person whose employment involves any of Respondent's businesses other than the applicable Affected Businesses. Such personnel shall be required to execute a confidentiality agreement to said effect. Nothing in this order, however, shall require the Respondent or the Independent Manager to hold separate the operations, assets or personnel used to provide such services.

[54] The Independent Manager(s) shall not communicate any Confidential Information acquired in the performance of the Independent Manager's duties under this order to any Person except to the extent required or permitted by this order. The Independent Manager will execute a customary confidentiality agreement in this respect.

[55] The Independent Manager(s) may provide Confidential Information to the following Persons: (a) any Person employed by Ernst and Young, the external auditors of Blue Circle; (b) any Person employed by Deloitte & Touche, the external auditors of Lafarge and (c) senior accountants employed by Lafarge or Blue Circle or their affiliates (the "Permitted Persons") only for the purposes of preparing standard financial and regulatory reports, tax returns and benefits administration and to comply with applicable law and governmental authorities in Canada, the United States, France and the United Kingdom (the "Permitted Purposes") and provided that:

- (i) prior to disclosure of any Confidential Information, each Permitted Person shall execute a confidentiality undertaking in the form of the Confidentiality Annex attached hereto; and
- (ii) the Permitted Persons shall use the Confidential Information only for the Permitted Purposes and shall not disclose such information to any other Person, whether or not an employee of the Respondent.

[56] Each Independent Manager is bound by the terms of this order but shall otherwise not be subject to liability for any act or omission arising out of his or her Independent Manager duties pursuant to this order, save to the extent such liability results from malfeasance, gross negligence or bad faith by the Independent Manager and subject to paragraph 13.

[57] The Respondent shall not directly or indirectly receive or have access to, or use or continue to use any Confidential Information relating to the Affected Businesses, except as may be necessary to comply with the terms of this order or as permitted by this order, and except to the extent that necessary information is exchanged in the course of consummating the Acquisition, defending investigations, defending or prosecuting litigation, obtaining legal advice, negotiating and meeting obligations under agreements to Divest assets pursuant to the Consent Order and engaging in related due diligence.

[58] Notwithstanding the above, this order does not preclude disclosure to, or receipt by, the Respondent of summaries in aggregate form such as revenue summaries, cash receipt summaries and tonnage summaries, provided that no Confidential Information is disclosed.

[59] The Respondent shall:

(a) take all reasonable steps to ensure that the Affected Businesses are independent of the Respondent, including transferring to the Independent Manager all rights, powers and authorities necessary for the Independent Manager to perform his or her duties and responsibilities under this order;

(b) not exercise any direction or control, direct or indirect, over the management or operations of the Affected Businesses or influence the marketing of the Affected Businesses except to the extent that the Respondent must exercise such direction and control to assure compliance with this order and except as otherwise provided in this order; and

(c) cause the operational manager(s) of the Affected Businesses to follow the reasonable instructions and directions of the Independent Manager given pursuant to the provisions of this order.

[60] Except as provided in this order and the Draft Consent Order, the Respondent shall not employ or make offers of employment to any Affected Business(es) Employee during the term of this order. The Purchaser of the Affected Business(es) shall have the option of offering employment to such Affected Business(es) Employees pursuant to the terms of the Draft Consent Order. After the expiry of this order, the Respondent may offer employment to the Affected Business(es) Employees who have not been offered employment or have been terminated by the Purchaser of such Affected Business(es). The Respondent shall not interfere with the employment of the Affected Business(es) Employees by the Purchaser of such Affected Business(es); shall not offer any incentive to said employees to decline employment with the Purchaser of such Affected Business(es) or accept other employment with the Respondent; and shall remove any impediments that may deter Affected Business(es) Employees from accepting employment with the Purchaser of such Affected Business(es) including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts with the Affected Business(es) Employees that would affect the ability of such Affected Business(es) Employees to be employed by the Purchaser of such Affected Business(es).

[61] For a period of one (1) year commencing on the date of the Divestiture of the Affected Business(es), the Respondent shall not employ or make offers of employment to any Affected Business(es) Employees who have been offered employment with the Purchaser of such Affected Business(es), unless such individuals have been terminated by the Purchaser of such Affected Business(es).

Monitor

[62] Upon issuance of this order, the Commissioner shall appoint Daniel E. Somes to serve as the person responsible for monitoring Lafarge's and the Independent Manager(s)'

compliance with this order in respect of the Affected Businesses. Lafarge shall be responsible for all fees or expenses properly charged or incurred by Monitor Some, or any substitute for Monitor Some, appointed pursuant to paragraph 22 herein below.

[63] In the event that the Monitor, appointed pursuant to paragraphs 21 above, is unable to perform monitoring duties under the terms of this order because of death, disability, termination for cause or any other reason, the Commissioner may appoint a substitute Monitor(s), provided that such appointment occurs more than 10 days after the Commissioner notifies Lafarge of the proposed substitute Monitor, including sufficient details for purposes of Lafarge's consideration of the proposed appointment. In the event that Lafarge objects to the Commissioner's appointment of a proposed substitute Monitor, Lafarge may apply to the Competition Tribunal for appropriate relief on five days notice to the Commissioner setting out the grounds for the objection. This order shall apply to any substitute Monitor appointed pursuant to this paragraph.

[64] For the purposes of monitoring compliance by the Respondent and the Independent Manager(s) with this order, subject to any valid claim to a legally recognized privilege, the Respondent and the Independent Manager(s) shall respond to requests for information by a Monitor appointed pursuant to paragraphs 21-22 above, and shall give the Monitor access to all information, records and documents of the Respondent relating to the Affected Businesses for which the Monitor is responsible, in the manner described below.

[65] For the purposes of monitoring the compliance by the Respondent and the Independent Manager(s) with this order, subject to any valid claim to a legally recognized privilege, the Monitor may request access to:

- (a) the premises of the Affected Businesses for which he or she is responsible;
- (b) any information relating to the financial records, operations and assets of the Affected Businesses for which he or she is responsible; and
- (c) meetings of the management of the Affected Businesses for which he or she is responsible.

[66] Where a request under paragraph 24 is made, the Respondent and the Independent Manager shall, if necessary, take all reasonable steps to promote compliance with the request.

[67] The Respondent shall not exert or attempt to exert any influence, direction or control over a Monitor appointed pursuant to paragraphs 21-22 which may adversely affect the discharge of the Monitor's duties under the terms of this order.

[68] If a Monitor appointed pursuant to paragraphs 21-22 considers that the Respondent or the Independent Manager(s) is in default of any of the terms of this order, the Monitor shall immediately notify the Commissioner of the breach, who shall forthwith give notice to the Respondent and the Independent Manager setting out the particulars of such default.

[69] A Monitor appointed pursuant to paragraphs 21-22 shall provide to the Commissioner, upon request, a written report in affidavit form relating to the Monitor's efforts to carry out the terms of this order and the Respondent's and the Independent Manager(s)' compliance with this order.

[70] A Monitor appointed pursuant to paragraphs 21-22 is bound by the terms of this order but shall not otherwise be subject to liability for any act or omission pursuant to the terms of this order, save to the extent that such liability results from malfeasance, gross negligence or bad faith by the Monitor and subject to Paragraph 30. This order shall not be construed as providing the Monitor with ownership, management, possession, charge or control of the Affected Businesses.

[71] A Monitor appointed pursuant to paragraphs 21-22 shall execute a customary confidentiality agreement in which the Monitor will undertake not to disclose any Confidential Information acquired in the performance of the Monitor's duties to any Person except to the extent required or permitted by this order.

[72] If the Monitor advises the Commissioner that the Respondent is in default of any of the terms of this order, or if the Commissioner otherwise believes such to be the case, then for the purpose of determining or securing compliance with this order, subject to any valid claim to a legally recognized privilege, and upon written request, the Respondent shall permit any duly authorized representative of the Commissioner:

(a) upon a minimum of three (3) days notice to the Respondent, access during office hours of the Respondent, to inspect and copy all books, ledgers, accounts, correspondence, memorandum, and other records and documents in the possession or under control of the Respondent relating to compliance with this order; and

(b) upon a minimum of eight (8) days notice to the Respondent, and without restraint or interference from the Respondent, to interview directors, officers or employees of the Respondent on matters in the possession or under the control of the Respondent relating to compliance with this order.

[73] Notices, reports or other communications required or permitted pursuant to this order shall be in writing and shall be considered to be given if dispatched by confirmed personal delivery or facsimile transmission to the parties listed in the Service List Annex to this order.

[74] This order does not prohibit anyone from providing Confidential Information to the Commissioner for purposes of the administration or enforcement of the *Competition Act*, including for the purposes of this proceeding.

[75] If the Commissioner's approval is sought pursuant to this order and such approval is not granted, or if a decision of the Commissioner is unreasonably delayed or withheld, the Respondent may apply to the Competition Tribunal for approval.

[76] The parties are at liberty to apply to the Competition Tribunal with respect to any issue concerning this order.

CONFIDENTIALITY ANNEX
COMPETITION TRIBUNAL
COMMISSIONER OF COMPETITION

v.

LAFARGE S.A.

CONFIDENTIALITY UNDERTAKING

IN CONSIDERATION of being provided with Confidential Information relating to the Affected Businesses as defined in the Consent Order of the Competition Tribunal dated, 2001 (the "Order"),

I, _____, of the City of _____, in the _____ of _____, agree to strictly maintain the confidentiality of all such documents and information.

I HEREBY CONFIRM that I have read the Order and I agree to be bound by the Order.

I HEREBY UNDERTAKE that I shall not disclose any confidential documents or information that relate to this Affected Business(es) that may be provided to me to any other person, except as expressly permitted by the Order, and that I shall not use any such documents or information for any purpose other than those expressly permitted by the Order.

I HEREBY ACKNOWLEDGE that any breach of this undertaking by me will be considered to be a breach of the Order.

DATED at _____ this _____ day of _____, 2001.

Witness:

Print Witness Name

Print Name

**SERVICE LIST ANNEX
SERVICE LIST**

THE COMMISSIONER:

**André Brantz
John Symes**

Department of Justice
Competition Law Division
Place du Portage, Phase 1
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Telephone: (819) 997-3325
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Counsel to the Commissioner of Competition

THE RESPONDENT:

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Counsel to Lafarge S.A.

THE MONITOR:

Daniel E. Somes

4287 Marin Woods, Apt. E
Port Clinton, Ohio
U.S.A. 43452

CONFIDENTIAL SCHEDULE "D"

AFFECTED BUSINESS(ES) KEY EMPLOYEE BONUS

[

]

APPEARANCES

For the applicant:

The Commissioner of Competition

André Brantz
John Symes

For the respondent:

Lafarge, S.A.

Lawson A.W. Hunter, Q.C
Randall J. Hofley
Susan M. Hutton